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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,986	11/13/2003	Chen-Hung Hung	BHT-3107-141	6768

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Bruce H. Troxell  
5205 Leesburg Pike, Suite 1404  
Falls Church, VA 22041

EXAMINER
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CONNELLY CUSHWA, MICHELLE R

ART UNIT	PAPER NUMBER
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2874

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/705,986

Applicant(s)

HUNG, CHEN-HUNG

Examiner

Michelle R. Connelly-Cushwa

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

Seven (7) sheets of formal drawings were filed on November 13, 2003 and have been accepted by the Examiner.

### ***Specification***

Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe et al. (JP 03-002705 A).**

Regarding claim 1; Watanabe et al. discloses a sleeve assembly (see Figures 1-4) of a fiber optical connector (21), the sleeve assembly being connectable to a bundle of optical fibers including one or more strands of optical fiber (23) having an exposed end portion, the sleeve assembly comprising:

- a sleeve comprising a hollow head (20) including a top hole (26) having a diameter slightly smaller than that of the strands of optical fiber (23), and a cavity (24) in communication with the top hole, the cavity being adapted to receive the bundle of optical fibers (23), and a

tube member (1) including an axial channel, the tube member being formed to fasten the head (20) at an end thereof;

- a hollow, cylindrical base (10) comprising a recess at one end for snugly receiving the other end of the tube member (1), and an axial tunnel in communication with the recess and the channel, the tunnel being adapted to receive the bundle of fibers (23).

Watanabe et al. does not specifically teach that the bundle of optical fibers (23) includes a layer of insulating medium surrounding the strands of optical fiber, and a buffer layer for surrounding the layer of insulating medium. Bundles of optical fibers comprising both an insulating material (cladding) surrounding the strands of optical fiber and a buffer layer surrounding the layer of insulating medium to offer protection are well known and commonly used in the art. One of ordinary skill in the art would have found it obvious to use any optical fiber in the invention of Watanabe et al., including optical fibers having both insulating materials (cladding) and buffer layers surrounding the fibers for protection, since Watanabe et al. does not disclose or suggest that any particular optical fiber is used, since it appears that the invention would perform equally well regardless of the particular optical fiber used, and since optical fibers having cladding and buffer layers are well known and readily available. Furthermore, one of ordinary skill in the art would have been motivated to use an optical fiber having both a cladding and buffer layer in the invention of Watanabe et al. to form an optical fiber connector having a well-protected optical fiber therein to preserve the transmission characteristics of the fiber.

Claim 1 recites "whereby heating the head will expand the top hole for enabling an insertion of the strands of optical fiber through the top hole with the bundle of optical fibers received in the cavity, the channel, and the tunnel; and cooling the head will contract the top hole to fasten the strands of optical fiber, and using a tool to compress the base will decrease its diameter for fastening the bundle of optical fibers" in lines 16-21 of claim 1, and recites "by heating and cooling" in lines 10-11 of claim 1.

It has been held that the functional "whereby" statement does not define any structure and accordingly can not serve to distinguish. *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). The functional recitation has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a function recitation must be expressed as a "means" for performing the specified function, as set forth in 35 U.S.C. § 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Furthermore, the claim 1 includes the process steps of "heating and cooling", "heating", "cooling" and "using". Applicant is claiming the product including the process of making the sleeve, and therefor claim 1 is of "product-by-process" nature. The courts have been holding for quite some time that: the determination of the patentability of product-by-process claim is based on the product itself rather than on the process by which the product is made. *In re Thrope*, 777 F. 2d 695, 227 USPQ 964 (Fed. Cir. 1985); and patentability of claim to a product does not rest merely on a difference in the method by which that product is made. Rather, it is the product itself which must be

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new and unobvious. Applicant has chosen to claim the invention in the product form.

Thus a prior art product which possesses the claimed product characteristics can anticipate or render obvious the claim subject matter regardless of the manner in which it is fabricated. A rejection based on 35 U.S.C. section 102 or alternatively on 35 U.S.C. section 103 of the status is eminently fair and acceptable. *In re Brown and Saffer*, 173 USPQ 685 and 688; *In re Pilkington*, 162 USPQ 147.

As such no weight is given to the process steps recited in claim 1.

Regarding claim 2; the head (20) further comprises a conic portion (27) and a hollow, cylindrical bottom extension (22) with the cavity received therein, and the tube member (1) further comprises an end well for receiving the extension.

Regarding claim 3; the tube member (1) comprises an end extension adapted to receive in the cavity.

Regarding claim 4; the tube member (1) further comprises an end well for receiving the head (20).

### ***Conclusion***

Any inquiry concerning the merits of this communication should be directed to Examiner Michelle R. Connelly-Cushwa at telephone number (571) 272-2345. The examiner can normally be reached 9:00 AM to 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney B. Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general or clerical nature should be directed to the Technology Center 2800 receptionist at telephone number (571) 272-1562.

*Michelle R. Connelly-Cushwa*

Michelle R. Connelly-Cushwa

Patent Examiner

May 13, 2005